



**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20036**

In the Matter of

EWERS ORCHARDS, INC.

Case No. 83-TLC-7

MOTION FOR RECONSIDERATION

The Regional Administrator, Region III, by and through the undersigned attorneys, hereby respectfully moves the Administrative Law Judge to reconsider the Decision and Order issued August 30, 1983, in the above-entitled case. In support of this Motion, the Regional Administrator states the following:

1. On June 28, 1983, Honorable Charles R. Richey of the District Court for the District of Columbia ordered. the Secretary not to grant temporary labor certification in 1983 to any West Virginia criteria employer who refused to agree to comply with the following:

- a. Pay back wages to employees who worked during the 1982 apple harvest to bring their wages to the level they would have earned had their wages been based on an AEWR of \$4.24 per hour and piece rate of \$.43 per bushel or \$.48 per box.
- b. Agree to pay all workers employed in the 1983 harvest at the 1983 AEWR when established and to take all appropriate action to insure that 1983 harvest workers receive all back pay due to them should the 1983 AEWR be established after the 1983 harvest season commenced and/or ended.
- c. Agree to adjust piece rates to be proportional to the AEWR so that an employee working at the same productivity rate required to earn the applicable AEWR in 1977 (or the year in which the employer first applied for temporary labor certification) might earn the current AEWR.

2. In letters dated July 21, 1983 and July 28, 1983, the Region III Regional Administrator informed Ewers that it must submit amendments required by Judge Richey's Order. The July 28, 1983 letter also advised Ewers that it was required to amend its 1983 clearance order to provide that the Judge Richey piece rates would be offered until such time as a final DOL rule was promulgated. Ewers was given until August 3, 1983, to comply or appeal to a Department of Labor Administrative Law Judge.

3. Ewers did not submit the amendments in compliance with the Regional Administrators' letters, nor did he appeal to the Administrative Law Judge by August 3, 1983.

4. On August 11, 1983, the Regional III Regional Administrator informed Ewers that its "failure to submit by August 3, 1983, written assurance that [it] will comply with the requirements of the Court order cited above as well as [its] refusal to amend [its] clearance order to reflect the Court ordered piece rates of \$.43 per bushel and \$.48 per box and productivity standard of 80 bushels per day, preclude[d] [the Regional Administrator] from approving [its] request for temporary labor certification for the 1983 harvest."

5. In fact, Ewers did not and cannot comply with Judge Richey's Order by merely assuring that it would comply with all legally final wage level standards for 1982 and 1983. The enforcement of the 1982 AEW is necessarily tied to the granting of 1983 certification specifically by Judge Richey's Order. The failure by Ewers to comply with the requirement that appropriate back pay be provided for its 1982 work force contradicts its assurance to pay "legally final wage level standards" since the 1982 West Virginia AEW is not in dispute.

6. To grant 1983 certification under these circumstances would be to put the Secretary directly in contempt of an Order by a Federal District Court. The Regional Administrator therefore urges the Administrative Law Judge to review carefully the two Order of Judge Richey (September 3, 1982 and June 28, 1983) before reaching a decision in the instant case.

For the above-cited reasons, the Regional Administrator respectfully urges that the Administrative Law Judge reconsider his Order granting 1983 temporary labor certification to Ewers.

Respectfully submitted,

U.S. Department of Labor
Office of
Administrative Law Judges

DENIED

By Order of:

EDWARD J. MURTY
ADMINISTRATIVE LAW JUDGE

Dated: **September 19, 1983**

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